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ADA COUNTY RECORDER
J. DAVID NAVARRO
BOISE, IDAHO

RECORDED - REQUEST OF

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Recording Requested By and
When Recorded Return to:
Steven F. Schossberger
HAWLEY TROXELL ENNIS & HAWLEY LLP
P.O. Box 1617
Boise, Idaho 83701

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**DECLARATION AND ADOPTION
OF RULES FOR CONSTRUCTION
WITHIN
BANBURY SUBDIVISION**

The Board of Directors ("Board") of Banbury Homeowners' Association, Inc., a non-profit corporation (the "Association"), pursuant to Article V of the Declaration of Covenants, Conditions and Restrictions for Banbury No. 1 Subdivision ("CC&Rs"), recorded as Instrument No. 8729275, Official Records of Blaine County, Idaho, as amended and supplemented, hereby declares and adopts the following rules regarding construction within Banbury Subdivision ("Banbury"):

1. SUBMITTALS FOR ARCHITECTURAL APPROVAL:

Prior to commencement of new home construction in Banbury, the Lot owner must obtain approval of the proposed improvements from the Banbury Architectural Control Committee. Approval must be in written form. Submittals for Architectural Control Committee ("ACC") approval shall be made on the "Application for Architectural Approval" form provided by the Association and must include the following:

- a. Complete site plan with a scale of 1" equals 20', showing the exterior perimeter of the lot, proposed location of all structures (including the septic system), driveways and walkways, easements and setbacks as specified in the applicable subdivision plat, drainage and site landscaping plan;
- b. Complete set of floor plans and elevations at a scale of 1/4" equals 1', the square footage of each floor as well as the total square footage area to be designated;
- c. Complete set of building specifications; said specifications should clearly indicate all interior and exterior materials to be used, type and color of windows, and type of heating system;
- d. Statement of a date when the Architectural Control Committee can make a physical on-site inspection for the purpose of viewing and approving the layout of the proposed structure on the site;

e. Any other information that may be requested by the Architectural Control Committee;

f. Payment of the Architectural Approval Fee as outlined in this document.

2. APPROVALS:

The Lot Owner shall be notified of the Architectural Control Committee's approval or disapproval of the Application within thirty (30) days from the date of submission. The approval shall be valid for a period of one year, at which time, if construction of the proposed improvements has not begun, such approval shall expire and no longer be in effect. Said approval may be conditional.

In the event the approval needs to be altered or modified, the Lot Owner shall submit a revised "Application for Architectural Approval" indicating the proposed changes from the approved plan. Said Application will be reviewed and the Application approved or disapproved in the same manner as the original Application for Architectural Approval. If the initial Application was accompanied by the full payment of the Architectural Approval Fee, then no additional fee will be required.

3. APPROVAL FEE:

An Architectural Approval Fee (\$100.00 for Phases 1 & 5; \$250.00 for Phases 2, 3 & 4; \$500.00 for Phases 6 & 7) shall be paid with each Application for Architectural Approval. The Architectural Control Committee may retain an architect or other consultant to review the Applications.

4. ARCHITECTURAL CONTROL COMMITTEE:

All submissions and inquiries to the Architectural Control Committee shall be addressed to the Committee c/o Development Services, Inc., 340 W. State Street, Eagle, Idaho 83616. Telephone 939-6000, Fax 939-6118.

5. CONSTRUCTION AND DESIGN:

Prior to construction, the contractor responsible for such construction (whether such contractor is an owner of a lot within Banbury, or is a third party) shall meet with the Architectural Control Committee, or its designee, for purposes of familiarizing the contractor with all pre-construction and construction requirements within Banbury. Such meeting may be arranged by contacting _____, _____, at (208) _____, or such other person as may be designated by the Board. Construction completion including finished painting shall be within eight months from the date of commencement of construction.

6. Contractor is responsible for site excavation, and for identifying the locations of underground utilities, irrigation lines and valves, etc., cables, etc., so that the same will not be inadvertently severed or damaged during construction. If any such utilities, lines or cables are inadvertently severed or damaged, the cost of such repair shall be billed back to the Lot Owner with a copy of the billing sent to the contractor.

7. Prior to any construction, a temporary, either orange or red, hard plastic interwoven construction fence at least four (4) feet in height, shall be constructed around the construction site, and around any trees within the site as designated by the Banbury Area Manager, and thereafter maintained during the course of construction.

8. Prior to any excavation being allowed on-site, the driveway for each lot must be installed. Driveway cuts onto streets shall be limited to one per lot, unless otherwise approved by the Architectural Control Committee. All driveway and walkway surfaces abutting the public sidewalk will be surfaced in a hard material, such as concrete, asphalt, brick, tile, etc.

9. During the course of construction, there shall be no overnight parking of any vehicles related to such construction, including, without limitation, employee vehicles or vehicles belonging to suppliers or vendors.

10. The Lot Owner, or the Lot Owner's representative, shall designate to the Architectural Control Committee the name and telephone number(s) of the superintendent or contact person in immediate charge of controlling construction activities on the lot. Such designation shall be kept current during the course of construction. If the designated superintendent or contact person is not readily available, the Lot Owner shall be deemed the contact person for all intents and purposes, and 24-hour prior written notice to such owner shall suffice regarding notice or contact required hereunder with respect to such superintendent or contact person.

11. Construction activities shall be permitted only during the hours of 7:00 a.m. to 7:00 p.m., Monday through Sunday.

12. NO CONSTRUCTION WORKERS' PETS (E.G., DOGS) SHALL BE ALLOWED AT ANY TIME ON THE CONSTRUCTION SITE.

13. NO LOUD RADIO BROADCAST AND/OR MUSIC EMANATING FROM THE CONSTRUCTION SITE SHALL BE PERMITTED AT ANY TIME. IF SUCH CAN BE HEARD FROM ANY NEIGHBORING LOT, IT SHALL BE CONSIDERED LOUD.

14. All construction vehicles, trailers, fencing, equipment, unused building materials, and so forth must be removed from the lot as soon as practicable after substantial completion of the construction, not to exceed fifteen (15) days; provided, however, that no occupancy shall be permitted until all construction vehicles, trailers, fencing, equipment and so forth have been removed.

15. While no specific form or minimum of landscaping is required for lots, all surfaced areas should be finished in some manner. A landscaping plan must be approved as a part of the Architectural review. As a general guideline, the front yard area of each lot shall include the following: (i) the ground area shall be planted with shrubs and ground cover, or utilized as entryways; (ii) plantings shall include a minimum of two (2) two and one-half inch (2½") caliper trees measured at twenty-four inches (24") above ground plane, and fourteen (14) five (5) gallon shrubs. (Any plantings that do not survive or are not healthy shall be replaced immediately.) On corner lots, the side yard shall be treated the same as front yards and landscaped accordingly. All landscaping must be completed prior to occupancy or within thirty (30) days thereafter. Special consideration will be granted from the termination of the irrigation system (approx. 10/15 to 4/1) upon approval by the ACC.

16. No buildings or structures are to be erected on any lot for the purpose of a temporary construction shelter or storage of construction materials. Temporary living quarters for workmen or the owner WILL NOT BE PERMITTED.

17. Temporary enclosed chemical toilets must be available during all construction. Chemical toilets should, if possible, be screened from view and located away from neighbors.

18. During construction, erosion shall be minimized through proper soil stabilization water control and timely vegetation. The Lot Owner or contractor shall implement all required control techniques.

19. All lots are to be cleared and excavated in a workmanlike manner with consideration for surrounding lots and homeowners. All dirt and debris not to be used in construction are to be removed from the area and stockpiled in an assigned location. Builders are responsible for repairs of any damage which may occur during excavation to sidewalks, mailboxes, streets, utilities or other onsite or offsite improvements.

20. Building heights will be controlled by the Architectural Control Committee to prevent the adverse impact that might be imposed on sensitive areas or air and light requirements of other properties. Unless otherwise approved, no dwelling structure shall exceed thirty-two (32) feet in height above the natural surface elevation of the ground and no barn, animal shelter or similar out-building shall exceed sixteen (16) feet above the natural surface elevation of the ground.

21. All exterior chimneys are to be of wood, stone, brick, or metal. All metal chimneys are to be painted as designated by the Architectural Control Committee.

22. Builders shall inspect all onsite improvements prior to commencement of construction and report any problems to the Architectural Control Committee. Unless otherwise notified prior to commencement of construction, all onsite improvements shall be considered in good repair and all damages occurring during construction will be the responsibility of the builder/lot owner. Said repairs are to be made immediately upon occurrence.

23. Wood shakes and shingles, tile and fiberglass shingles are the only approved roof material unless otherwise approved by the Architectural Control Committee.

24. Only normal entrance lights on porches and garages shall be allowed, except that each lot owner shall install the required driveway entrance light, with photo-cell device, adjacent to the juncture of the driveway and the street. Mercury vapor lamps are considered a nuisance and not allowed without prior specific approval of location and size by the Architectural Control Committee. Colored lights shall be prohibited. Decorative and/or landscaping lighting must be specifically approved by the Architectural Control Committee. Lighting for Holiday purposes is excluded from the above.

25. Wood and hardboard siding with full-bodied stains and paints in earthtone colors and brick, stone or stucco in earthtone colors are acceptable for exterior use. Exterior color and material treatment used shall be continuous and consistent on all elevations to achieve a uniform design and to avoid a "Wainscot" look. Colors shall be compatible with surrounding homes and must be pre-approved by the Architectural Control Committee. All vents and pipes shall be painted a color compatible with the color scheme of the building.

26. Wood, white clad vinyl and bronze anodized metal are approved for all windows, door frames, skylights and garden windows. Mill finished aluminum windows are not acceptable, nor can they be installed and later painted. All glass, plastic or other transparent skylight and garden windows shall be treated to eliminate reflective glare.

27. Utility meters are to be placed in an unobtrusive location and concealed behind fences where possible.

28. All gutters and downspouts are to be continuous in nature and shall be colored to blend with the surface to which they are attached.

29. Each homeowner should screen such service items as garbage and trash containers and miscellaneous storage area so that they cannot be seen from the street or surrounding homes. Consideration shall be given to the placement of all heat pumps, compressors or like equipment so that they are not a nuisance to surrounding homes and they should be fenced where possible.

30. Connection to all utilities must be underground. Materials must conform to the State of Idaho Electrical and Plumbing codes and must be inspected by the proper governmental agency. Before you allow anyone to dig at BanBury, check for underground sprinkler and utility lines. If you have any questions, call Stan McHutchison, Briggs Engineering, Inc., 344-9700, 1551 Federal Way, Boise, Idaho.

31. The Lot Owner or contractor shall cause the construction site to be maintained in as clean and orderly condition as is practicable, with no loose debris or trash permitted to accumulate, and dumpsters or other trash containers not permitted to overfill, and regularly emptied. The job site must be cleaned up on a daily basis prior to leaving the site. A metal

dumpster, provided by a refuse company for trash and debris is required and shall be the builder's responsibility. This dumpster shall be located within the lot boundary and shall not be placed in the street or sidewalk adjacent to the lot. Excessive mud or dirt shall not be permitted to be tracked from the site onto the roadways within Banbury. If, despite verbal warning, such excessive mud or dirt is not removed, the Banbury Manager is authorized to sweep the affected roadways and back charge the Lot Owner at the rate of \$50 per hour. If the Association must have the dumpster emptied or trash cleaned up, this will also be charged at a rate of \$50.00 per hour.

32. Regular construction inspections shall be conducted by the Architectural Control Committee or its designee(s), to insure compliance with these rules. Pursuant to Article IX of the CC&Rs, the Board hereby establishes the following system of procedures, fines and penalties:

(a) Initial infraction of a rule will result in a verbal warning to the designated superintendent or contact person. If the infraction is not promptly corrected, either another verbal warning or a written citation, as determined appropriate by the Architectural Control Committee, will be issued. A letter from the Board with a copy of the citation will be sent to the owner and the contractor.

(b) Continued infraction of the rule will result in another citation being issued and a fine imposed. The citation and a Letter Notice setting forth the repeated infraction and the fine imposed will be issued to the designated superintendent or contact person. A letter from the Board with a copy of the Letter Notice and the citation will be sent to the owner and the contractor. The fine imposed shall be \$100.00 per day, per infraction, which fine amount shall accrue until the infraction of the rule has ceased.

(c) If, despite the imposition of a fine, the infraction continues, the Board, in its discretion, may issue a Red Tag Notice, which shall be issued given to the designated superintendent or contact person. Delivery of the Red Tag Notice shall cause all construction work to halt, until the infraction of the rule has ceased. A letter from the Board with a copy of the Red Tag Notice will be sent to the Lot Owner and the contractor.

33. In addition to any fee that may be charged under the CC&Rs or any other Rules of the Banbury Subdivision (e.g., the Architectural Control Committee review fee, and the Common Area damage Special Assessment under Section 4 of the CC&Rs), prior to the start of any new home construction, and as an additional condition to approval of construction by the Architectural Control Committee, the Lot Owner shall pay to the Banbury Subdivision Homeowners' Association a Construction Deposit in the amount of \$2,000.00, to be deposited in an interest bearing account of the Association. Such deposit shall be subject to refund after deduction of any fine imposed under these Rules for Construction. If such deposit is exhausted and a fine amount remains to be paid, the same shall be collected pursuant to the Special Assessment provisions of the CC&Rs. Upon completion of construction, any balance of such deposit shall be reimbursed to the owner, together with any interest accrued therein.

Upon recordation hereof, these rules shall have the same force and effect as if they were a part of the CC&Rs and should any of these Rules be inconsistent with the CC&Rs, the CC&Rs shall govern. This Declaration shall be effective as of the date of recordation hereof.

WITHOUT LIMITATION UPON ANY OF THE FOREGOING, PRIOR TO APPROVAL OF CONSTRUCTION BY THE ARCHITECTURAL CONTROL COMMITTEE, A COPY OF THESE RULES SHALL BE EXECUTED BY THE LOT OWNER(S), LOT OWNER'S REPRESENTATIVE, ARCHITECT AND/OR CONTRACTOR, AND PLACED ON FILE WITH THE ARCHITECTURAL CONTROL COMMITTEE. SUCH EXECUTION BY SAID PERSONS SHALL CONCLUSIVELY EVIDENCE THEIR ACKNOWLEDGEMENT OF AND AGREEMENT TO THESE RULES AND THE MATTERS SET FORTH HEREIN.

**THESE RULES FOR CONSTRUCTION UNANIMOUSLY PASSED BY
THE BOARD OF DIRECTORS OF
BANBURY SUBDIVISION HOMEOWNERS' ASSOCIATION
SEPTEMBER 14, 2000.**

BANBURY SUBDIVISION HOMEOWNERS' ASSOCIATION

Board of Directors:

R. Blair Miller

George Swann

Diane Anderson

Erudite Bernhard

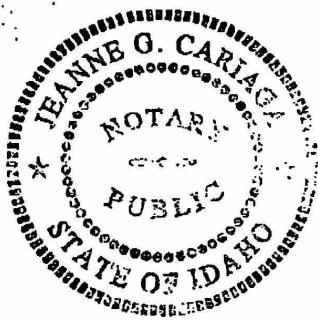
STATE OF IDAHO)

:ss.

County of Ada)

On this 27th day of September, 2000, before me, Jeanne G. Cariaga, a Notary Public in and for said State, personally appeared R. CLAIRE MILES, DIANE ANDERSON, BURDETT BERNHARDT AND MORGAN MASNER, known or identified to me to be Members of the Board of Directors of BANBURY HOMEOWNERS' ASSOCIATION, INC. who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year in this certificate first above written.



Jeanne G. Cariaga

NOTARY PUBLIC FOR IDAHO

Residing at Boise, ID

My Commission Expires: 8/23/2003

NOTARY - board of directors